THE BYRD LIQUOR LAW.

Chap. 189.—An Act to define and regulate the sale, distribution, rectifying, manufacture and distilling of intoxicating liquors and malt beverages, and to impose license taxes thereon, and to prohibit the drinking of ardent spirits on railroad trains, and to repeal sections 141 and 142 of an act entitled an act to amend and re-enact sections 75 to 147, inclusive, of an act approved April 16, 1903, entitled an act to raise revenue for the support of the government and public free schools, and to pay the interest on the public debt, and to provide a special tax for pensions as authorized by section 189 of the Constitution, approved February 19, 1904, and to prescribe penalties.

Approved March 12, 1908.

INTOXICANTS DEFINED AND ENUMERATED.

1. Be it enacted by the general assembly of Virginia, That all mixtures, preparations and liquors which will produce intoxication, shall be deemed ardent spirits within the meaning of this act, and this definition shall include beer, malt liquors containing two and a quarter per cent. alcohol and which produce intoxication, whiskey, wine, brandy, or any mixture thereof, fruits preserved in ardent spirits, alcoholic bitters, and all other intoxicating liquors.

What Liquors "Will Produce Intoxication."—Where it is a matter of common knowledge that certain liquors when taken in sufficient quantities, will produce intoxication, the courts will take judicial notice of that fact. But if it is not well known and well recognized by the people generally that a drink is intoxicating, proof of the fact that it is intoxicating should be required. For example, if there is a new drink, or a beverage not so well known, such as "argaric," or "rice beer," and other drinks common under prohibition laws, proof that it is an intoxicating liquor would be necessary. Snider *v.* State, 81 Ga. 753, 7 S. E. Rep. 631.

Medicinal, toilet, and culinary preparations recognized as such by standard authority (such as the United States Dispensatory) and not reasonably capable of use as intoxicating beverages—e. g., tincture of gentian, paregoric, bay rum, cologne, essence of lemon, wood alcohol —are not ordinarily to be regarded as being within the meaning of the expression "intoxicating liquors," though such articles are liquid, contain alcohol, and may produce intoxication. Mason *v.* State, (Ga) 58 S. E. 139.

Patent medicines, cordials, bitters, tonics, and other articles not recognized by standard authority as being within the class just mentioned are to be regarded as being intoxicating liquors, if they are capable of being used as a beverage and contain such a percentage of alcohol as that, if drunk to excess, they will produce intoxication. Mason *v.* State, (Ga.) 58 S. E. 139.

That apple brandy is intoxicating, is a matter of common knowledge of which the court will take judicial notice. Thomas *v.* Com., 90 Va. 95.

The courts cannot know, in the absence of proof, that "ginger" is intoxicating. Savage *v.* Com., 84 Va. 582, 5 S. E. 563.

Courts cannot take judicial cognizance that home-made blackberry wine is intoxicating. The intoxicating qualities of such wine do not appear to be so well known or recognized by people generally. Loid *v.* State, 104 Ga. 727, 30 S. E. Rep. 949. In this case, Simmons, C. J., said: "We think, therefore, that until the judicial mind is better informed as to the intoxicating qualities of home-made blackberry wine it is best for the trial judges to submit the question to the jury."

Courts cannot notice judicially that rice beer is intoxicating. Whether it will produce intoxication or not must be proven. Bell *v.* State, 91 Ga. 227, 18 S. E. Rep. 288; Snider *v.* State, 81 Ga. 753, 7 S. E. Rep. 631; DeVall *v.* Augusta, 115 Ga. 813, 42 S. E. Rep. 265. In this case it was said that potato beer, rice beer and persimmon beer are known to be not intoxicating.

The courts cannot judicially know that "Dr. Harter's Wild Cherry Bitters" is a spirituous, vinous or malt liquor. Blankenship *v.* State, 93 Ga. 814, 21 S. E. Rep. 130.

EXCLUSIVENESS OF ACT.

2. No person, firm, or corporation shall make, disfill, manufacture or sell ardent spirits except subject to the provisions of this act.

The law requiring a license for the sale of liquor is not restricted to persons who are engaged in carrying on a business of selling liquor, for a single sale violates the law and renders a party liable to punishment. Lewis *v.* Com., 90 Va. 843, distinguishing Piedmont Club *v.* Com., 87 Va. 540.

LICENSES CLASSIFIED.

3. No person, firm, or corporation shall sell ardent spirits without first obtaining a license therefor, which license shall be divided into five classes; (a), a wholesale license; (b), a retail license; (c), a malt liquor bar license; (d), a sample liquor merchant's license; (e), a social club license, which several licenses shall confer the privileges as set forth in the subsequent sections of this act, and no others, and shall be subject to all the conditions, limitations and penalties hereinafter set forth.

PRIVILEGES ACCRUING UNDER THE VARIOUS LICENSES.

4. A wholesale license shall confer the privileges of selling in quantities of not less than five gallons, except wholesale dealers in malt liquors who may sell not less than one dozen bottles or jugs of such malt liquors. A retail license shall confer the privilege of selling in quantities not exceeding five gallons to any individual to be delivered in jugs or bottles or demijohns or to be drunk where sold. A malt liquor bar license shall confer the privilege of selling malt liquor to be drunk where sold but not to be carried away. A sample liquor merchant's license shall confer the privilege of selling by samples or other representation, or to act

as agent for the sale or collection of orders for ardent spirits by sample or description. A sample liquor merchant's license shall be a personal privilege, and shall not be transferable, nor shall any abatement of the sum required to be paid allowed. No person, firm or corporation licensed as a sample liquor merchant shall be authorized to sell except to some club, person, firm or corporation under the provisions of this act.

Sales by Gallon.—To constitute a sale by the gallon there must be a sale and delivery to the buyer of an entire gallon. Setting aside a gallon in a jug and marking it for the purchaser, who has paid for it, and subsequently delivering it in smaller quantities to the purchaser, or on his order, is an evasion of the law. McKeever *v.* Com., 98 Va. 862, 36 S. E. 995, following Richardson *v.* Com., 76 Va. 1007.

Where one is indicted for selling liquor without license to two persons jointly, and also for selling to the same persons jointly in quantities of less than one gallon, and the evidence shows a separate sale to each of them, this court will not disturb a verdict of conviction when no plea was interposed, and no objection made to the introduction of the evidence. McKeever *v.* Com., 98 Va. 862, 36 S. E. 995.

At trial of indictment for selling liquor by retail in quantities less than one gallon, under Acts 1879-80, ch. 155, § 12, p. 151, the jury asked of the court the question—"As a distiller, has the defendant a right to sell one gallon of liquor, and receive pay therefor, and deliver it in less quantities at different times?" To which the jury received for answer—"The court doth instruct the jury that to constitute a sale by the gallon, there must be a sale and delivery to the buyer of an entire gallon; that a contract for a gallon, and the delivery of the same in parcels at different times, is a violation of the law." Held: The instruction correctly expounded the law. Sales of liquor in the mode suggested in the question of the jury, would be mere shifts to violate the statute. Richardson *v.* Com., 76 Va. 1007.

LICENSING SOCIAL CLUBS.

5. Any corporation, firm or association chartered and organized as a social club which shall desire to keep on hand ardent spirits to be sold directly or indirectly or given away to members of such corporation, shall procure a license in accordance with the provisions of this act, and shall be entitled to all the privileges and subject to all the conditions, limitations and penalties prescribed by this act. But no such license shall be granted under this act to any social club in any local option or no license territory.

HOW CLUB LICENSE OBTAINED.

6. Any corporation chartered and organized as a social club and desiring to keep on hand at its club house or club rooms ardent spirits, to be sold given or dispensed to the members and their bona fide guests of such corporation or club, which shall obtain a license on the following condition and not otherwise, shall not be affected by the next preceding section.

TO WHAT COURT APPLICATION MADE AND CONTENTS OF APPLICATION.

(a) Such corporation or club shall apply to the court having authority to grant liquor licenses in the county or corporation in which its club house or club rooms are located for leave to keep on hand at its club house or club rooms such ardent spirits for the use of its members, and with such application shall furnish a list of the names of all the members of such club or corporation and of its officers, together with their places of residence.

NOTICE OF APPLICATION-BOND TO BE FURNISHED.

(b) Notice of such application shall be posted at the front door of the courthouse at least fifteen days before the day on which the application is to be made; in which notice shall be given the day on which the application will be made in open court. Such notice shall be published at least twice a week in a newspaper published in the county or corporation where the club house or club rooms are located, and if no newspaper be published therein, then in a newspaper having general circulation in said corporation or county. The notice shall be signed by the president and governors, or other governing body of such club. Before granting the privilege the court shall require the club to execute a bond in the penalty of five thousand dollars with security, either personal or corporate, to be approved by the court and conditioned for the faithful compliance by the said corporation or club with all the provisions of this section. If personal surety or sureties be tendered by the corporation or club, the court shall not accept the same unless they, or one of them, shall own in fee simple unencumbered real estate assessed for taxation at not less than five thousand dollars. On breach of condition the bond shall stand forfeited for the benefit of the Commonwealth, and recovery may be had thereon against the obligors or any of them upon motion after ten days notice of such motion.

"BONA FIDE SOCIAL ORGANIZATION," DEFINED—MAXIMUM AMOUNT OF LICENSE.

(c) The court shall not grant the privilege aforesaid until and unless it be established to the satisfaction of the court that the said club or corporation is a bona fide social organization and has occupied within the corporation or county in which the application is made a club house or club rooms (not less than four rooms), which have been continuously open day after day for the exclusive use of its members and their bona fide guests for a period of twelve months preceding such application; that such corporation or club has kept a record of its members, of its pur-

chases and disbursements and of its income from all sources; which record shall be open to the inspection of the court, the commissioner of the revenue of the corporation or county, and the chief of police of the city or town in which said club house or club rooms are located; that the said corporation or club is composed of not less than thirty members (all of whom shall be twenty-one years of age,) who had paid their monthly or other periodical dues, and which dues shall have aggregated not less than eight dollars each yearly; provided, however, that no person who has joined a club after January first, nineteen hundred and six, shall be deemed a member of any such club or corporation within the purview of this act, unless his name shall have been proposed for membership and duly posted at some conspicuous place in the club house or club rooms for at least seven days before his election; that a bona fide initiation fee of not less than five dollars has been required of each member and paid, as a condition precedent to membership; that the actual control and management of the said corporation or club is exercised by regularly appointed governors, directors or other governing body, composed at the time of such application of men of such character and standing in the community as that in the opinion of the said court, to be entered of record, they are suitable, fit and proper persons to be entrusted with the privileges aforesaid; provided, that such governors or directors shall be residents of the said county or corporation, and not less than five in number; and that such corporation or club has paid to the treasurer of such county or corporation a sum equivalent to two dollars for each resident member of such corporation or club; provided, however, that the sum to be paid to the State for such privilege by any such corporation or club shall in no case exceed the sum required for a retail liquor license under this act, which payment shall exempt the said corporation or club from any other license or tax, either by State, county, or municipal authorities.

WHO MAY CONTEST APPLICATION.

Any person may have himself entered as a party defendant to the application for such privilege and may contest the granting thereof in accordance with the provisions of section ten of this act.

GRANTING AND POSTING CERTIFICATE—LOCAL OPTION TERRITORY.

(d) Upon the court being satisfied that the requirements of this section have been fully complied with it shall grant a certificate to that effect and that such privilege may be exercised by said club or corporation, which shall be kept conspicuously posted in said club house or club rooms; provided, however, that no such privilege shall be granted in any territory where retail

liquor license cannot be granted or locality in which under the local option laws the licensing of the sale of such liquors and fruits is prohibited.

FINES AND FORFEITURES.

If any such corporation or club shall keep on hand at its club house or in its club rooms ardent spirits to be sold or given to its members, or shall directly or indirectly sell or give away to its members or to any other person any such ardent spirits, without acquiring the right to do so under the provisions of this section, the said club or corporation shall upon conviction thereof be fined five hundred dollars for each offense, and in addition thereto shall forfeit its charter.

LIABILITY OF OFFICERS AND AGENTS OF CLUBS.

Any person representing himself to be an officer or agent of any such corporation or club, who shall make such application for the privilege aforesaid with intent to evade any provisions of the laws of the Commonwealth, governing the licensing and sale of intoxicating liquors, or who shall sell or give away to any member of such corporation or club or to any other person, directly or indirectly, any such ardent spirits at the club house or club rooms of the said corporation or club, without such club or corporation having acquired the privilege aforesaid in the manner aforesaid, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than two hundred dollars, nor more than five hundred dollars for each offense, and shall be confined in jail not less than one month nor more than twelve months; and any person permitting his name to be used as a member of such corporation or club with intent aforesaid, shall be likewise deemed guilty of a misdemeanor and fined as aforesaid.

SALES BY DRUGGISTS.

7. Any druggist who desires to sell ardent spirits or alcoholic bitters, shall take out a retail liquor dealer's license and shall, in all respects, be deemed a retail liquor dealer, and be subject to the requirements of this act; provided, the provisions of this act shall not apply to liquor used by any druggist in the preparation of medicine. No alcoholic bitters, whether the same may have been manufactured in this State or elsewhere, shall be sold in this State by any person who has not obtained a license under this act.

NO LICENSE TERRITORY.

8. No license for sale of ardent spirits shall be granted for such sale in any territory wherein such license is prohibited by

law, nor shall such license for such sale be granted except as follows:

PLACES WHERE IT MAY BE SOLD—QUALIFIED VOTER RULE AND ITS EXCEPTIONS.

(a) For sale within towns of five hundred inhabitants or more, based upon the last preceding United States census; (b) at a hotel or social club, at a health resort having a natural mineral spring connected therewith, or situated by the sea or any large body of salt water connected therewith; (c) a community within a county contiguous to a city (though such community be not incorporated) having police protection paid for by the public and wherein the court upon evidence is satisfied that there are within a radius of one-half mile where the business is supposed to be conducted five hundred or more inhabitants and wherein license for the sale of ardent spirits has been granted during the twelve months prior to the passage of this act; provided, that no part of any city or incorporated towns shall be included within such radius; (d) incorporated cities. No license shall be granted in any of the above cases unless the court is satisfied that proper and satisfactory police protection is afforded. No license to retail ardent spirits shall be granted to any person except such person is a qualified voter of the county or city in which the business is to be conducted and if the license is taken out by a corporation then the officer or agent of said corporation selling or dispensing ardent spirits shall have such qualification, but this qualification as to the licensee shall not apply to persons at present engaged in the business of the sale of ardent spirits who now reside outside of the city, town, or county, in which they conduct such business, but who are qualified voters in the State, or to manufacturers of ardent spirits who mash twenty bushels or more per day, their officers or agents and the officers and agents of social clubs which comply with the requirements of section six of this act, and nothing in this section shall be construed to prohibit the granting of license to manufacturers of ardent spirits who mash twenty bushels or more per day. Nor to the manufacturers of alcoholic liquors by direct fermentation who distill as much as two hundred gallons of pomace or cider per day when in operation and licensed for the period of one year.

FROM WHAT COURTS LICENSE OBTAINED—FORM AND REQUISITES OF APPLICATION.

9. Licenses required by this act shall be obtained from the circuit or corporation court of the county or city in which the business is to be conducted, except that the license to a sample liquor merchant shall be obtained on the certificate of the circuit, corporation, or hustings court of some city of the State, but

when so obtained the license shall carry the privileges of selling anywhere in the State. The clerk of the court granting the certificate to certify to the genuineness of the license under the seal of the court. Any person, firm, company, corporation, partnership, or association desiring to obtain a license such as is required in any of the cases specified in this act, shall make a written application therefor to a commissioner of the revenue of the county or city from the circuit or corporation or hustings court of which a certificate is required. Such application shall state the name of the applicant, the residence of the applicant, and the nature of the business for which the license is desired, the place where it is proposed to be prosecuted, and the amount required by law to be paid for the privilege of such license. Upon such application shall be endorsed the certificate of the treasurer of such county or city that the amount so required has been deposited with him by the applicant in gold or silver coin, United States treasury notes, or national bank notes.

ENDORSEMENT OF APPLICATION—HEARING OF APPLICATION.

When such application for a sale within a city has been endorsed by the commissioner of the revenue, "referred to the corporation court of the city of .....," or otherwise when such application has been endorsed by the commissioner of the revenue, "referred to the circuit court of ..... county," as the case may be, the applicant shall present the application so endorsed to the corporation or circuit court whose certificate is required, and said court shall thereupon hear such evidence as may be introduced for or against the application and hear and determine the question of granting the same.

RIGHT OF THIRD PERSONS TO CONTEST APPLICATION—APPEAL.

10. It shall be lawful for any person who may consider that he would be aggrieved by granting any license under this act to have himself entered and made a party defendant to said application and to defend and contest the same. If the court be fully satisfied, upon the hearing of the testimony for and against the application, that the applicant is a fit person to conduct such business, and that he will keep an orderly house and personally superintend the same and that the place at which it is to be conducted is a suitable, convenient, and appropriate place for conducting such a business, the court may, upon the execution by the applicant of bond in the penalty of five hundred dollars, with good security, conditioned for the faithful compliance with all the requirements of this act, grant such license; and thereupon the commissioner of the revenue shall issue the same in such form as may be prescribed by the auditor of public accounts. In case an application is refused by the court, the applicant shall

have refunded to him by the treasurer or other collecting officer the amount of money deposited by him. There shall be no appeal from the order of the circuit or corporation court granting or refusing a license.

Contesting Application for License.—The words "any person aggrieved" are not in very frequent use in statutes relating to the right of appeal, and such words are generally construed as to mean any person having an interest, recognized by law in the subject matter of the judgment, which he considered injuriously affected by the action of the court. In a legal sense, a person is aggrieved by an act when a legal right is invaded by the act complained of. A college has a direct interest in the enforcement of the law against the sale of intoxicants to students, and has the right to its enforcement, as, in additi to the moral responsibility resting upon the authorities of the in: tution, its financial success depends in a large measure on the influe. es which affect the characters of its students and which are manifested in their deportment, and a college may recover a statutory penalty for violation of a law prohibiting the sale of liquor to students. Daniels *v.* Grayson College, 50 S. W. 205, 20 Tex. Civ. App. 562.

"Aggrieved," as used in a statute providing that a liquor dealer's bond may be sued on at the instance of any person or persons "aggrieved" by the violation of its provisions, should be construed in its legal sense instead of its common acceptation; and in its legal sense it means "having suffered loss or injury; damnified; injured." Where the bond was conditioned that an open, orderly, and quiet house should be kept, a person residing in the vicinity who is disturbed and annoyed by music, dancing, and loud and indecent language occurring in such house, and whose sleep is often disturbed thereby, and whose boarders have left him on account thereof, is an "aggrieved" person. Cunningham *v.* Porchet, 56 S. W. 574, 575, 23 Tex. Civ. App. 80.

To become an adverse party to such a proceeding, for the purpose of resisting the application, a remonstrance must be filed; it is error to permit an unnamed party to appear by attorney and resist the application. Ex parte Miller, 98 Ind. 451.

On an application for a liquor license, it was error to instruct the jury that the facts that the applicant threw dice with certain minors to ascertain who should buy lemonade and beer, and played pool with a minor, "would not be sufficient to defeat his application," as the applicant's fitness to be intrusted with such license was a question for the jury. Hardesty *v.* Hine, 135 Ind. 72, 34 N. E. 701.

On an application for a liquor license, it is proper to show that at various times minors were allowed to be about the pool table in the saloon of which the applicant was manager, and that the applicant threw dice with a minor in said saloon, when things of value were won and lost. Hardesty *v.* Hine, 135 Ind. 72, 34 N. E. 701.

"A remonstrance on the ground of the immorality of the applicant, or of his unfitness otherwise to be entrusted with the sale of intoxicating liquors, ought to set forth the particulars of the immorality imputed to him, or of his unfitness otherwise, with such reasonable degree of certainty as will advise him of the nature of the charge against him, so that he may be able to meet it." Grummon *v.* Holmes, 76 Ind. 585.

Where a person wrongfully and maliciously obstructs the granting of a license under this section, he is liable to an action for damages. Claus *v.* Hardy (Neb.), 47 N. W. 418.

The words "may grant such license," mean the court shall have the jurisdiction to do so, and must do so, if the applicant brings himself within the requirements. The word "may" is sometimes construed as mandatory and sometimes as permissive, as will best carry into effect the true intent and object of the legislature. Leighton *v.* Maury, 76 Va. 865.

Appeal from Granting or Refusing License.—The Legislature may prescribe what courts shall be invested with the power to grant or refuse license to sell liquor, and may deny an appeal to any other court when it is not otherwise provided by the Constitution. Hulvey *v.* Roberts, 106 Va. 189.

COSTS.

The party to any such proceeding who shall substantially prevail in cases where such applications are contested shall recover his costs from the opposite parties as in civil cases.

NOTICE OF INTENTION TO MAKE APPLICATION.

Every applicant for a license under this act to do business at a place where a license has not heretofore been granted shall advertise his intention of making such application by posting a written notice of such intention at the front door of the court house of the county or the city in which the business is proposed to be conducted, and also at the place where it is proposed to conduct said business, for thirty days next preceding the day on which such application shall be presented to the court, and no court shall consider any such application until it shall have been first proved to its satisfaction that the notice required by this section has been posted.

Notice of Application.—It is generally provided, by statute or ordinance, that notice shall be given, in some public manner, of all applications for liquor licenses, for a prescribed period of time, in order that persons interested in contesting particular applications may be fully informed when and where to take action. Compliance w th such requirement is a jurisdictional requisite and essential to the validity of a license. 23 Cyc. p. 126.

AMOUNT OF LICENSE TAX.

11. The amount to be paid for a license for the privilege of selling by wholesale ardent spirits, shall be four hundred and fifty dollars; provided, however, that if any wholesale dealer shall desire the privilege of selling malt liquors only, the specific amount to be paid by him for the privilege shall be one hundred and fifty dollars. The specific license tax for selling under a malt liquor bar license shall be two hundred dollars.

The specific sum to be paid for the privilege of selling by retail ardent spirits, shall be four hundred and fifty dollars. Should the retail license be for sale in any hotel then in addition to the said sum there shall be paid an additional sum of one

dollar per room for every room available in said hotel for lodging and accommodations of travellers, sojourners, boarders, and guests who may patronize said hotel; provided, however, that hotels at resorts having a natural mineral spring or large body of salt water connected therewith a license contemplated by this section may be granted for a part of the year, and in such cases the license tax shall be abated for that part of the license year for which the license is not desired.

SAMPLE LIQUOR MERCHANTS' LICENSE.

12. The amount to be paid for the privilege of doing business as a sample liquor merchant shall be five hundred dollars, and no person, firm, or corporation, shall permit any person, except a duly authorized agent or salesman, to sell under their license otherwise than for their exclusive use and benefit. No agent or salesman shall be permitted to sell, or offer to sell, as aforesaid, except he have with him at the time the license granted to the person, firm, or corporation from whom he acts, which license shall state the name of the person, firm or corporation to whom the license was granted and the name of the agent or salesman using the same, and also a duly executed power of attorney constituting him such agent or salesman, which license and power of attorney shall be exhibited whenever required by any officer of the law or private citizen. For every agent or salesman employed to sell as aforesaid there shall be paid five hundred dollars. Sales of ardent spirits, or any mixture of any of them, by sample, shall be limited to sales by wholesale. Nothing in this section shall be construed to require any licensed wholesale liquor dealer who has paid his license as such (an amount of not less than four hundred and fifty dollars) to pay an additional amount for selling, or offering to sell, by sample, either by himself or agents; provided, that every such agent shall first apply to the court of some city for the certificate hereinbefore required. No person, firm, or corporation shall hire their licenses or allow the use of the same to any other person, firm, or corporation; and any person, firm, or corporation who shall so hire or allow the use of such license to any other person, firm, or corporation, shall forfeit such license; and the person, firm, or corporation using such license shall pay a fine of four-hundred dollars for each offense: provided, that any person licensed as a manufacturer under this act may sell by sample, either in person or through his agents, provided the sales be by wholesale, but no sale shall be made under the license provided for in this section except to some club, person, firm or corporation licensed under this act.

SALE OF WOOD ALCOHOL.

13. Nothing in this act shall be construed as licensing any per-

son, firm, or corporation to sell wood alcohol, or any mixture thereof, as a beverage, and the sale of such wood alcohol, or mixture thereof, as a beverage, is hereby prohibited.

WHOLESALE AND RETAIL BUSINESS COMBINED.

Any person desiring to carry on the business of a wholesale liquor dealer and that of a retail liquor dealer shall obtain a separate license for each, and comply with all the provisions of this act in relation to both.

CIDER AND WINE.

14. Nothing in this act shall be construed as applying to the manufacture or sale of cider which is the pure juice of the apple without any addition of alcohol, distilled spirits, wine or other intoxicating liquor, or any other mixture whatever except preservatives not prohibited by United States law. Provided, however, that any such cider that will produce intoxication shall not be sold in quantities of less than five gallons in local option territory, or in territory in which license to sell ardent spirits at retail has not been granted, except by the person growing the fruit from which the cider is made; provided, further, that no cider containing more than six per cent. of alcohol at the time of the sale shall be sold in local option territory, or in territory where license to sell ardent spirits at retail has not been granted; provided, further, that nothing in this act shall prevent the sale of cider to be delivered to a common carrier to be transported to a place where ardents spirits may be legally sold, nor to a licensed distiller for purposes of distillation. Provided, further, that this act, except this section, shall not apply to the sale of pure wine manufactured by the person growing the fruit from which the wine is made; provided, no such sales be made in local option or no license territory; provided, further, such persons may sell such wine to be delivered to a common carrier to be transported to some place where ardent spirits may be sold legally.

Cider.—Under Acts 1906, p. 307, c. 181, providing that pure apple cider shall be construed to mean the pure juice of the fruit, not containing more than 7½ per cent. of alcohol, the commonwealth, on prosecuting one for selling ardent spirits, need not allege or prove that the liquor sold was not pure apple cider, and accused has the burden of proving that the cider sold was such as he had a right to sell without a license. Devine *v.* Commonwealth, (Va.) 60 S. E. 37.

MANUFACTURERS AND DISTILLERS.

15. Every manufacturer or distiller of alcoholic liquors shall pay for said privilege, at the time his license is granted, a specific sum therefor, to be graduated and classified as follows: The

manufacturer who shall mash and distill less than ten bushels per day, thirty dollars; ten bushels and less than twenty per day, seventy-five dollars; twenty bushels and less than thirty per day, one hundred and fifty dollars; thirty bushels and less than forty-five per day, two hundred dollars; forty-five bushels and less than seventy-five per day, two hundred and fifty dollars; seventy-five bushels and less than one hundred per day, three hundred and fifty dollars; one hundred bushels and less than one hundred and fifty per day, four hundred and fifty dollars; one hundred and fifty bushels and less than two hundred per day, five hundred dollars; two hundred bushels and less than two hundred and fifty per day, six hundred dollars; two hundred and fifty bushels and less than three hundred per day, seven hundred dollars; and on each one hundred bushels per day in excess of three hundred at the rate of three hundred dollars for each one hundred bushels so mashed per day. The above specific sums shall be paid before commencing his operations, and on the payment of such specific sum the manufacturer shall have the privilege of selling the liquors actually manufactured by him in quantities of not less than one gallon at the house where the same is manufactured: provided, further, that all liquors bought shall be taken away at the time bought from the place where sold; and provided, further, that no such manufacturer shall sell at retail any ardent spirits in local option or no license territory in which said manufactory of ardent spirits is located, except that such manufacturer shall be permitted to deliver his product to any common carrier to be transported to any place where it may be legally sold. The manufacturer of alcoholic liquors by direct fermentation and distillation from pomace or from cider or fruits, where the distillery is run less than three months, shall pay a specific sum of five dollars, but if the distillery is run more than three months and less than six the specific amount to be paid for the privilege shall be twenty dollars, and if run six months or more there shall be paid for the privilege fifty dollars. It shall be the duty of every licensed distiller who manufactures whiskey from grain or who manufactures brandy from fruit to furnish the commissioner of the revenue a copy of the returns made by him to the internal revenue assessor of the United States, and the commissioner of the revenue shall require said licensed distiller to make affidavit to the correctness of such return. On payment of the above sum the distiller of brandy shall have similar privilege in regard to the sale of brandy manufactured by him to those granted to distillers of whiskey. For the privilege of manufacturing malt liquors there shall be paid one hundred and fifty dollars and upon payment of such specific sum the manufacturer shall have the privilege of selling the products of his brewing in quantities of two

dozen pints or more at any place within the State of Virginia, except where such manufactory is situated in a no license territory; in which case no sale shall be made and delivery had at the place of manufacture; but such manufacturer may sell the product of his brewing to be delivered to a common carrier to be transferred to any place where same may be legally sold; and the said manufacturer shall have the additional privilege of selling the products of his brewing in quantities not less than one gallon at the place of manufacture, except in no license territory. Every person, firm or corporation maintaining in this State a distributing or storage warehouse for malt liquors who has not paid a license tax as a manufacturer of malt liquors, shall pay for such privilege the sum of one hundred and fifty dollars.

MANUFACTURERS OF CIDER.

Any person manufacturing pure cider who does not come within the provisions of section fourteen, shall pay an annual tax of fifteen dollars per year except the provisions of this section shall not apply to any person, firm or corporation who manufacturers or sells cider which is the pure juice of the apple without any addition of alcohol, distilled spirits, wine of other intoxicating liquor, or any other mixture whatever, except preservatives not prohibited by United States law, and shall be allowed to sell where and in such manner as is set forth in section fourteen.

LICENSE TO MANUFACTURE OR DISTILL IN TOWNS OF LESS THAN FIVE HUNDRED INHABITANTS.

16. Except in towns of more than five hundred inhabitants, based upon the last United States census, and in cities no license to manufacture or rectify ardent spirits shall be granted, unless an addition to the other requirements of this act it plainly appears to the court before whom such application is made that the applicant is a voter in the State of Virginia, that a majority of the qualified voters of the magisterial district or incorporated town in which the privilege is sought to be exercised are in favor of the application, and that the manufacture or distillation of ardent spirits at that place will not be contrary to sound public policy or injurious to the moral or the material interests of the community, and that there is adequate police protection at the place of such manufacture, and such distiller shall not sell in territory where license to retail ardent spirits is not granted. The term voter or qualified voter wherever used in this act shall be construed to mean any person who has the qualifications prescribed by law for voters at special or local option elections.

AS AFFECTED BY QUANTITY PRODUCED AND WHETHER SITUATED IN NO LICENSE OR LOCAL OPTION TERRITORY.

This section except the part of it requiring the applicant to be a voter in the State, shall not apply to manufacturers or distillers of ardent spirits who mash twenty bushels or more per day, nor to manufacturers of alcoholic liquors by direct fermentation who may distill as much as two hundred gallons of pomace or cider per day and are licensed for the period of one year, but no such distillers or manufacturer shall sell and deliver at the place of manufacture when the same is in any no license or local option territory, except for delivery to a common carrier as herein provided. It shall be lawful for the manufacturer of wines, who shall have a manufactory in any county, district or corporation, which may vote or has voted against liquor license therein, as provided by law, to sell such wines, in any licensed territory, in quantities of not less than five gallons or one dozen bottles, and to distill the refuse, offal, or by-product of the grapes used in the manufacturer of such wine or wines into brandy, and may sell such brandy in quantities of not less than five gallons, or one dozen bottles provided delivery be made of the wines or brandies so manufactured and so sold, to a common carrier, to be transported out of such county, district or corporation and it shall be lawful for manufacturers to obtain a license to sell and distill, should a license be required of such manufacturer.

Sale in Prohibited Quantity.—A licensed distiller, having no license to sell liquor in quantities of less than a gallon, violates the laws by selling a gallon or more, to be left in his custody, and taken away by the purchaser in quantities of less than a gallon. McKeever *v.* Com., 98 Va. 862, 36 S. E. 995.

On trial of indictment for selling liquor by retail in quantities less than one gallon, under acts, 1879-80, ch. 155, § 12, p. 151, the jury asked of the court the question—"As a distiller has the defendant a right to sell one gallon of liquor, and receive pay therefor, and deliver it in less quantities at different times?" To which the jury received for answer—"The court doth instruct the jury that to constitute a sale by the gallon, there must be a sale and delivery to the buyer of an entire gallon; that a contract for a gallon, and the delivery of the same in parcels at different times, is a violation of the law." Held, the instruction correctly expounds the law. Sales of liquor in the mode suggested in the question of the jury, would be mere shifts to violate the statute. Richardson *v.* Com., 76 Va. 1007.

AMOUNT PAYABLE FOR LICENSE TO MANUFACTURE.

17. The specific amount which each rectifier shall pay for the privilege of carrying on his business shall be two hundred and fifty dollars, except that a manufacturer of ardent spirits may rectify spirits of his own manufacture without paying any additional sum for such privilege. Each rectifier who shall desire

to sell, by wholesale or retail, spirits so rectified by him, shall pay for such privilege the same amount required to be paid by other wholesale and retail dealers in ardent spirits.

FORM OF LICENSE.

18. The auditor of public accounts shall prescribe a form for licenses required by this act, which forms shall have printed on them in plain letters, at least one inch in length, in words and figures, the year when issued, the month when the license begins and expires, and also the class of license.

DISPLAY OF LICENSE.

Every person obtaining any such license shall post the same in a conspicuous place in his office, if a wholesale liquor dealer; and if a retail liquor dealer or malt liquor saloon-keeper, shall post the same in the most conspicuous place about his bar or place of retailing, and shall expose the same to common observation; and any person failing to keep such license so conspicuously posted shall, on conviction, be fined not exceeding one hundred dollars.

Display of License.—Act Tex. March 29, 1887, § 8, which provides that a saloon-keeper shall post in a conspicuous place the license he was required to obtain under the law, and also that he shall furnish a bond before obtaining it, is constitutional, as the legislature has the power to regulate the manner in which saloons shall be conducted. Ex parte Bell, 6 S. W. (Texas) 197.

The Texas act prohibiting the selling of malt liquors without having posted in a conspicuous place in the house wherein the occupation is pursued a license issued by the county clerk, is not in conflict with const. Tex. art. 16, § 20, conferring upon counties, cities, towns, and justice's precincts the right of prohibiting the sale of intoxicating liquors. Bell *v.* State, 12 S. W. (Texas) 410.

SALES ON PARTICULAR DAYS OR TO OR BY PARTICULAR CLASSES OF PERSONS.

19. No person or club, firm, corporation or association shall sell or dispense ardent spirits of any description on Sunday or Christmas day, or to a person under twenty-one years of age, or to any student at any public school, college or university, or to an idiot, or knowingly sell to a lunatic or epileptic, habitual drunkard or to any intoxicated person. Nor shall any person buy ardent spirits for any minor, student at any public school, college or university, or for any lunatic, idiot, epileption habitual drunkard or intoxicated person, nor shall any person, firm, association or corporation, sell or dispose of any description of ardent spirits to an habitual drunkard, or in any local option or no license territory, or between the hours of six p. m. the day before an election day and the hour of six a. n. on the day suc-

ceeding such election day, nor shall any saloon be kept open between the hours of twelve p. m. and five a. m. Nor shall any female or minor be employed in any capacity in any saloon. In cases of a sale to persons under twenty-one years of age, or to idiots or lunatics, the license at the place where the ardent spirits were so sold shall be revoked by the court that granted the same. When any person is convicted by a justice of the sale of ardent spirits to a person under twenty-one years of age or to an idiot or lunatic, the justice trying the case shall certify such convictions to the circuit court of his county or the judge thereof in vacation; which court or judge shall unless there is an appeal and reversal of the justice revoke the license of the person so convicted.

Giving of Is a Dispensing.—A charge of "selling and dispensing" intoxicating liquors is supported by proof of giving away such liquors. Johnson *v.* Chattanooga, 97 Tenn. 248, 36 S. W. 1092.

Sales Prohibited on Certain Days.—In Thomasson *v.* State, 15 Ind. 449, the supreme court of Indiana held that it is competent for the legislature, as a police regulation, to prohibit, under penalties, the sale of liquor by retail on Sunday, as well as on election and other public days.

Ky. St. 1903, § 1303, punishing any person who shall on Sunday keep open a barroom for the sale of liquors, or who shall sell liquors, in force at the time of the adoption of the constitution, is a valid exercise of the police power of the state, and is not in conflict with Constitution, § 61, requiring the general assembly to provide a law whereby the sense of the people of any city, etc., may be taken as to whether or not liquors shall be sold therein or the sale thereof regulated, the section not taking away from the legislature the police power which it had over the liquor traffic. The statute is not invalid because it makes the keeping open of a barroom on Sunday for the sale of liquors one offense, and the act of selling, another offense, and each sale a separate offense. Commonwealth *v.* McCann, 94 S. W. (Kentucky) 645.

Sales to Minors—Averment of Knowledge of Minority Not Necessary.—To make a licensed seller of liquors liable under § 16, ch. 32, W. Va. Code, 1887, for selling to a minor, it is not necessary to aver in the indictment that he knew, or had reason to believe, the person to be a minor. State *v.* Bear, 37 W. Va. 1; 16 S. E. 368.

Same—Knowledge as to Minority.—In an indictment for selling intoxicating liquor to a minor under a statute which declared "It shall be unlawful for any person by agent or otherwise to sell intoxicating liquors to minors, unless upon the written order of their parents," the West Virginia court decided that it was not necessary to prove that the person who sold liquor to a minor knew at the time of the sale that the purchaser was a minor. State *v.* Cain, 9 W. Va. 559. In that case the court expressly holds that the statute must be construed as remedial, and not penal. And in respect to motive or intent it says: "As to whether the seller intended to violate the law or not at the time of selling to the minor is, under the authorities above cited, immaterial, except in mitigation of the punishment." State *v.* Cain, 9 W. Va. 559, 576; State *v.* Denoon, 31 W. Va. 122, 5 S. E. 315.

Same—Effect of Diligent Inquiry as to Age.—The sale of spirituous

liquors to a minor is sufficient to convict of the offense, unless the defendant, after due inquiry, was honestly mistaken in respect to the minor's age, and to show such mistake, while the dealer need not inquire of the parent alone as to the age of the person to whom he sells, yet he must exercise special diligence to ascertain the truth; and such diligence will not be manifested by inquiry of the minor alone, or of such persons as have no better means of knowing than the dealer, but it must of such persons as to satisfy the jury that the inquiry was honest and not a mere subterfuge or cover for crime. Reich *v.* State, 63 Ga. 616. See Stern *v.* State, 53 Ga. 229; Burnett *v.* State, 92 Ga. 474, 17 S. E. Rep. 858.

Same—Minor among Several Invited to Drink.—Where the accused placed a jug of whiskey upon a counter in a public store, and extended a general invitation to several persons who were present, to come and help themselves, and a youth of sixteen, who was present, accepted the invitation and took a drink, the accused was guilty of violating § 4540 (a) of the Georgia Code, although he may not have actually seen the minor take the drink. Under such circumstances, it was incumbent on the accused to see to it that his invitation was accepted by adults only, and his failure so to do at least amounted to such criminal negligence as was legally equivalent to an actual intention on his part to furnish the whiskey to the minor. Blodgett *v.* State, 97 Ga. 351, 23 S. E. Rep. 830.

Same—Purchase by Another for Minor.—The Georgia Code, § 4540 (a) which makes it penal to furnish intoxicating liquors to a minor, is violated by a person who receives money from a minor with which to procure and pay for such liquor, and at the minor's request purchases and delivers it to him, and the belief of such person that the minor was an adult will not protect him, unless this belief was honestly entertained after making proper and reasonable inquiry into the facts—such inquiry as would be reasonable at the time under all the circumstances of the transaction. Burnett *v.* State, 92 Ga. 474, 17 S. E. Rep. 858.

Same—When Liquor Is Paid for by Another.—The supplying of intoxicating liquor to a minor to be drank by him, is a furnishing of the liquor to the minor, within the meaning of the Ohio act of April 5, 1866, although it may have been purchased by another and supplied by the seller to the minor in pursuance of such purchase. State *v.* Munson, 25 O. St. 381. See also, Granger *v.* Knipper, 2 C. S. C. R. 480, 13 O. Dec. Reprint 1021.

Same—Sale to a Minor as Agent.—Where a sale was made to a minor as agent of S., it was held that this was a sale to S. and not within the provisions of the law against the sale of intoxicating liquors which provides against sales to minors. Pollard *v.* State, Cleve. L. Rec. 35, 4 O. Dec. Reprint 30.

Same—Testimony of Minor.—On the trial of an indictment founded upon the third section of chapter ninety-nine of the acts of the legislature of 1872-73, it is competent and not improper for the minor to state on his examination as a witness on behalf of the state, upon his oath, his age to the jury, with the view of proving that he was a minor at the time of the sale of the intoxicating liquors in the indictment mentioned, to him by the defendant, and such statement may go to the jury as evidence to be considered by them, notwithstanding there is evidence given to the jury tending to show that his father and mother are living. And in such case, it is not error for the court to refuse to instruct the jury that "Unless it is proved beyond reasonable doubt, by the best evidence of which the case will admit, and the evidence of

the minor himself is not such evidence, that the minor was at the time of the alleged selling to him of intoxicating liquor by defendant, under the age of twenty-one years, they must find the defendant not guilty." State *v.* Cain, 9 W. Va. 559.

Sales to Students.—In Peacock *v.* Limburger, 67 S. W. (Texas) 518, it is held that the statutes prohibiting the sale of liquors to students of institutions of learning do not deprive citizens of their equal rights, liberty, property, privileges, and immunities, or deny to them the equal protection of the laws, in violation of the provisions of the constitution of Texas or the United States.

Sale to Inebriate.—On the trial of a licensee for selling or giving intoxicating liquors to a person in the habit of drinking to intoxication, it devolves upon the state to show beyond a reasonable doubt that such licensee knew, or had reason to believe, that such person was in the habit of drinking to intoxication. State *v.* Alderton, 50 W. Va. 101, 40 S. E. 350.

In Allen *v.* The State, 52 Ind. 486, a question arose as to the constitutionality of a statute making it "unlawful for any person, by himself or agent, to sell, barter or give intoxicating liquors to any minor, or to any person intoxicated, or to any person who is in the habit of getting intoxicated." The court in its opinion saying "It has been held to be constitutional and valid, and has been enforced in many cases. Williams *v.* The State, 48 Ind. 306; Hanson *v.* The State, 43 Ind. 550; Farrell *v.* The State, 45 Ind. 371; Connell *v.* The State, 46 Ind. 446; The State *v.* Young, 47 Ind. 150; Fountain *v.* Draper, 49 Ind. 441; Meyer *v.* The State, 50 Ind. 18. We regard the question as settled and put at rest."

A man is intoxicated whenever he is so much under the influence of spirituous or intoxicating liquors that it so operates upon him, that it so affects his acts, or conduct, or movement, that the public or parties coming in contact with him could readily see and know that it was affecting him in that respect. Sapp *v.* State, 116 Ga. 182, 42 S. E. Rep. 410.

In prosecutions under § 3 of the "act to provide against the evils resulting from the sale of intoxicating liquors in the state of Ohio," defendant may show, to rebut proof of knowledge, by his own and other persons' testimony, that shortly prior to the time of the alleged unlawful sale, he made inquiry of persons well acquainted with the person charged in the indictment as a person in the habit of getting intoxicated, whether he was a person in the habit of getting intoxicated; and also show what information he obtained from such persons. His good faith and due care in seeking and obtaining such information, as well as the proper effect thereof under all the circumstances, are to be left to the jury. Crabtree *v.* State, 30 O. St. 382.

Evidence having been given tending to prove that the person to whom intoxicating liquor was sold was in the habit of getting intoxicated, and that he resided in the neighborhood of the vendor, it is competent to give his general reputation in that regard in evidence, as a circumstance tending to prove the vendor's knowledge of such habit. Adams *v.* State, 25 O. St. 584.

Most, if not all, of six applicants for the purchase of intoxicants had been seen intoxicated, some of them more than once. Four had been arrested and punished for drunkenness. The seller admitted having seen one of them drunk before he sold to him, and he had heard of another being drunk, and had refused to sell him liquor. The testimony opposing was of a negative character only. Held, that they were addicted to the use of intoxicants as a beverage, and the sales

to them were illegal, under Iowa Acts 23d Gen. Assem. c. 35, § 10. Harlan *v.* Richmond, 78 N. W. 809.

Employment of Female or Minor.—It is a valid police regulation of the sale of intoxicating drinks that women shall not be employed in connection therewith. Such a regulation is not a denial to women of the equal protection of the laws assured by the fourteenth amendment to the United States constitution. Hoboken *v.* Goodman, 68 New Jersey Rep. (39 Vr.) 217, 51 Atl. 1092, citing Bergman *v.* Cleveland, 39 Ohio St. 651; In re Considine, 83 Fed. Rep. 157. And it is no ground of objection to such a regulation that the wife of a licensed male proprietor is allowed to sell or distribute such drinks. Hoboken *v.* Goodman, 68 New Jersey Rep. (39 Vr.) 217, 51 Atl. 1092.

"Women may, constitutionally, be barred from occupations that are subject to license. Bradwell *v.* State, 16 Wall. 130; In re Lockwood, 154 U. S. 116." Hoboken *v.* Goodman, 68 New Jersey Rep. (39 Vr.) 217, 51 Atl. 1092.

"The wife of the proprietor of a place of public entertainment is not in any fair sense an employee, and her presence may fairly be deemed to be deterrent of impropriety." Hoboken *v.* Goodman, 68 New Jersey Law Rep. (39 Vr.) 217, 51 Atl. 1092.

Suit was brought against a retail liquor dealer and the sureties on his official bond, under the Texas act of April 4, 1881 (Gen'l Laws, p. 113), for knowingly permitting a minor to enter upon and remain in the retail liquor dealer's place of business. It was shown that the minor was employed by the defendant to aid him in his grocery with the written consent of the boy's mother; that before being employed there he had been out of employment for a month, and had been unable to procure employment elsewhere; that his mother was poor, and that his wages were greater than he could have otherwise have obtained. On appeal from a judgment against the defendant and his sureties, held: The consent of the mother to the employment of the minor by the saloon keeper did not protect him against the enforcement of the penalty of the bond; the court holding that the statute was enacted for the purpose of shielding youth from temptation, and the state has power to enact the law and provide for its enforcement, in disregard of the parents' wishes, when its object and tendency is to protect the child; and for such a purpose, if necessary, if the parents were unfitted to properly rear their offspring, the state could confide the child to the keeping of another. Goldsticker *v.* Ford, 62 Tex. Rep. 384.

GUARANTY OR ASSURANCE AS TO THE PURITY OF LIQUIDS.

20. It shall be unlawful for any corporation, association, partnership or person to guarantee as pure any cider which is not the pure juice of the fruit out of which it is made, without any admixture whatever, except preservatives not prohibited by the United States laws, or for any corporation, association, partnership or person to sell any liquids or mixtures, which produce intoxication, under a guarantee that such liquids or mixtures do not come within the provisions of this act, or to give any guarantee or assurance, which have for their object and purpose the protection and indemnity of persons who purchase for the purpose of sale such liquids or mixtures and who have no license for the sale thereof under the laws of this State.

JURISDICTION TO TRY GUARANTOR OF LIQUID.

The circuit or corporation court of any county or city wherein such cider, liquid or mixture is sold under guarantee shall have jurisdiction to try the guarantor, or guarantors, and when presentment is made in any such court proper process against the accused shall at once be issued and executed, and the case regularly heard and tried.

DRINKING ON PASSENGER TRAINS.

20½. Any person who shall drink intoxicating liquors or spirituous, vinous or malt liquors or alcoholic beverages or any mixture of the same on a passenger train in this State, except by special permission obtained from the conductor of such train, shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifteen dollars, provided, however, that the provisions of this section shall not apply to buffet, dining or Pullman cars.

SEARCHES.

21. When it is matter of common report, and on complaint on oath in writing of two or more reputable citizens, that there is a reasonble cause to believe that the provisions in this act as to the illicit sale of ardent spirits are being violated, the place to be named in such oaths, the justice to whom such complaint is made, if satisfied that there is reasonable cause therefor, shall issue a warrant to search such specified places for ardent spirits, and if, upon such search, there shall be found more than two gallons of ardent spirits at any of such places in the possession of any person, the fact of the finding of such ardent spirits shall be admitted as evidence, along with other evidence introduced, to establish that the person in whose possession such spirits were found was or had been engaged in the illicit sale of ardent spirits.

Search Warrants.

Common Report Defined.—Rumor is found to be: "Flying or popular report; a current story passing from one person to another without any known authority for the truth of it." Webster's Dictionary. If next we turn to "report," we find it one of the synonyms of "rumor," another "hearsay," another "story." State *v.* Culler,-82 Mo. 623, 627.

Admissibility of Common Report.—Rumor or report is hearsay and can only be admitted as an exception to the hearsay rule. See Granger *v.* Com., 78 Va. 212.

Sufficiency of Complaint and Warrant.—If the complaint and warrant follow the forms prescribed by statute it is sufficient, and the circumstances need not be alleged with a particularity of averment beyond that. State *v.* 25 Packages of Liquor, 38 Vt. 387.

Signing Complaint.—It would certainly seem that under this section

it was necessary for the complainants to sign their complaint. See Gill *v.* Parker, 31 Vt. 610.

Oath.—A complaint for search and seizure of intoxicating liquors, under Rev. Stat. Me. c. 27, § 40, may be made on affirmation by one who is conscientiously scrupulous of taking an oath. State *v.* Welch, 79 Me. 99, 8 Atl. 348.

The affirmation or oath as to the facts and circumstances on which his belief rests, does not form a part of the complaint, and does not need to be framed with technical accuracy. Commonwealth *v.* Intoxicating Liquors, 13 Allen 52. Commonwealth *v.* Intoxicating Liquors, 105 Mass. 181, 183.

Statements in Complaint or Warrant.—The facts disclosed on oath by the complainant under this section, need not be stated in the complaint or warrant. State *v.* Hobbs, 39 Me. 212.

"Reputable Citizen."—The Code of Iowa, § 1544, provides: "If any credible resident of any county shall" * * * make complaint or file an information the justice shall issue a warrant. The justice determines whether the informant is a credible resident or not, but the statute does not require such fact to be stated, either in the information or warrant. As a matter of form and substance, both are sufficient. State *v.* Thompson, 44 Iowa, 399, 400.

"Reasonable Cause to Believe."—Such a complaint need not allege that the complainant has "probable cause to believe." It is enough for the complainant to allege that he does in fact believe that intoxicating liquors are thus kept. State *v.* Welch, 79 Me. 99, 8 Atl. 348, citing State *v.* Nowlan, 64 Me. 531.

Common Reports as Foundation of Complaint.—The allegation of the complainant that the facts and circumstances on which his belief is founded consist of common report, is sufficient. The facts and circumstances are required to be stated, not as tending to convict the defendant when put upon his trial, but to satisfy the magistrate that there is sufficient cause for issuing a searchwarrant, and to enable him to state with reasonable propriety that probable cause has been shown to him for issuing it. His decision is not subject to appeal, and must be regarded as conclusive, unless it appears to be utterly groundless. But common report may be of such a character as to convince any reasonable magistrate that an investigation ought to be made, and that a warrant ought to be issued for that purpose; and as the magistrate is obliged to make an official statement that it appears to him that probable cause has been shown for issuing the searchwarrant, it would be his duty to inquire into the character of the record, and ascertain the degree of its credibility. If it satisfies him, the statute is complied with, and the warrant is legal. Com. *v.* Lededy, 105 Mass. 381, 383.

To justify the issue of a warrant under the St. of 1869, c. 415, §§ 44, 45, to search a dwelling house for intoxicating liquors alleged to be kept therein by J. S. for sale contrary to law, it is a sufficient statement, by one of the complainants, of the facts and circumstances on which his belief that such liquors have been unlawfully sold there during the preceding month and are still kept there for unlawful sale is founded, "that many people have been seen going to and coming from there, and waiting outside of the house, for J. S. to come, with bottles in their hands." Evidence of the mere seizure, in the cellar of a dwelling house, of a barrel and a bottle of whiskey, of a barrel of rum, partly full, with a faucet in it and lying on its side in a frame, and of bottles and demijohns which had contained liquors; and in a sink in a room over the cellar, of a small tub, some orange peel, and

two small tumblers, such as are sometimes used in barrooms; is insufficient to warrant a finding that the liquors were kept by the occupant of the house for sale contrary to law. Commonwealth *v.* Intoxicating Liquors, 105 Mass. 595.

The description of the place required by this act to be named in the oaths of the complainant is sufficiently certain, if it be such as would be required in a deed to convey a specific parcel of real estate. State *v.* Barton, 47 Me. 388.

Description of Person.—A complaint that the liquors are kept by "a person unknown" for illegal sale, is sufficient. Com. *v.* Certain Intoxicating Liquors, 116 Mass. 21.

Issuance of Complaint and Searchwarrant.—The complaint and searchwarrant may be issued together as one instrument. State *v.* Erskine, 66 Me. 358; State *v.* Stoffels (Minn.), 94 N. W. 675.

Finding of Liquor as Evidence.—The latter part of this provision that "the fact of the finding of such ardent spirits shall be admitted as evidence," established no new rule of evidence. The finding of intoxicating liquors on the premises, with the implements and appliances usually connected with the sale of intoxicating liquors, was already competent evidence tending to show that the place was kept for the secret and unlawful sale of such liquors. The fact that the property was taken under a search warrant does not render it inadmissible in evidence. State *v.* Stoffels, 94 N. W. 675, 677, distinguishing Boyd *v.* United States, 116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746, on the ground that the holding in that case was that the compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property, was in effect an unreasonable search and seizure and compelling him to be a witness against himself. There is a clear distinction between a man's private papers which are neither the subject of crime nor the means of perpetrating it, and stolen property, implements of gaming, and other property kept and used for an unlawful purpose, which may be given in evidence against the defendant although possession of the same was obtained by a search warrant.

DELIVERY BY CARRIER IN NO LICENSE OR LOCAL OPTION TERRITORY.

22. It shall be unlawful for any owner, operator, agent, clerk, occupant, or other person, of any depot, storehouse, warehouse, store-room, office, steamboat, wharf-boat, or other place situated or being in any county, district, city, or ward in this State wherein the sale of ardent spirits are at the time prohibited by law, or where the sale of said liquors are not licensed, to deliver any such liquors to, or receive pay for the same from any person other than the person to whom the same is billed or shipped, and to whom it is bona fide addressed, or his employee upon the written order of such consignee.

POWER OF AGENTS OF DISPENSARY TO SHIP OR DELIVER TO PERSONS OUTSIDE OF CORPORATION.

23. It shall not be lawful for the managers or employees of any dispensary established under the laws of this State to ship or deliver ardent spirits to persons outside of the village, town or city in which said dispensary is located.

Any violation of this section by any manager or employee, of any such dispensary, shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense.

DEFINITION OF "MALT BEVERAGE."

23½. That "malt beverage" within the meaning of this section, shall be construed to be the product of a brewing plant, or brewery, and shall, as to its composition, comply with the standards now, or as may hereafter be prescribed by the pure food commissioner of the United States, but shall be non-intoxicating and in no event contain in excess of two and one-quarter per cent. in volume of alcohol.

POWER TO MANUFACTURE "MALT BEVERAGES."

No person, firm, or corporation shall manufacture "malt beverage," as herein defined, except subject to the provisions of this act.

"Malt beverage" shall be manufactured only by some person, firm or corporation having a manufacturer's malt liquor license, and who shall, before manufacturing the same, pay an additional special license tax of two hundred and fifty dollars ($250.00) per year and execute a bond in the penalty of ten thousand dollars ($10,000) before and with security (either personal or corporate), approved by the judge of the circuit or corporation court of the county or city in which such manufacturing is proposed to be done; the condition of said bond shall be to faithfully comply with the provisions of this act.

SALES OF "MALT BEVERAGE" BY MANUFACTURER.

"Malt beverage" shall be sold by the manufacturer direct to the consumer (not to be drunk where sold) and in quantities of not less than one half dozen bottles, nor more than four dozen bottles at any one time, and shall not be sold or offered for sale by any other person, firm or corporation. "Malt beverage" shall be sold only in bottles in which shall be blown, in letters at least one-half inch in height, the name and address of the manufacturer, and the words "malt beverage." No person, firm or corporation shall place in such bottles and sell or otherwise transfer any liquid containing alcohol in excess of two and one quarter per cent. in volume.

PUNISHMENT FOR VIOLATION OF PROVISIONS AS TO "MALT BEVERAGES."

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, or, in the dis-

cretion of the jury, confined in jail for not less than three months nor more than twelve months for each offense.

ANALYSIS BY STATE CHEMISTS.

24. It shall be the duty of the State commissioner of agriculture, at the written request of any officer, State, county or municipal, charged with the execution of the revenue laws to cause to be analyzed any mixture supposed to contain alcohol and to return to the officer making the request a certificate of the chemist showing such analysis. The certificates of the chemist of the agricultural department of this State, when signed and sworn to by him, shall be evidence in all prosecutions under the revenue laws of this State and in all controversies touching the mixture analyzed by him, but the burden shall be upon the prosecution to establish the fact that the mixture analyzed is the same as that alleged to have been illicitly sold, but upon the motion of the accused the chemist shall be required to appear as witness and shall be subjected to cross-examination.

EVIDENCE—BURDEN OF PROOF.

25. In all prosecutions for the violation of this act, when evidence has been introduced on behalf of the Commonwealth proving that the defendant sold a certain liquid or mixture, by whatever name it may be called, to be drunk as a beverage, and that the drinking of such liquid or mixture produced intoxication, the burden shall be on the defendant to show that such liquid or mixture was not intoxicating within the meaning of this act, or that it was pure apple cider the sale of which is not prohibited by section fourteen of this act.

STATUS OF PLACES WHERE PROVISIONS ARE VIOLATED.

26. All places where ardent spirits are manufactured, sold, bartered or given away in violation of the provisions of this act, are hereby declared to be common nuisances.

INJUNCTION.

The attorney-general of the attorneys for the Commonwealth of the several cities and counties or any citizen of the county or city where such nuisance exists or is kept or maintained, may maintain a suit in the name of the State to abate and perpetually enjoin the same. But the defendant shall have the right to demand that any issue of fact arising in such cause shall be tried by a jury.

Conviction Necessary before Injunction Issues.—Under § 18 of ch. 32 of the West Virginia Code, a court of equity can not restrain by injunction a party charged with selling intoxicating liquor con-

trary to law until the owner or keeper of the house, building or place where such intoxicating liquors are alleged to be sold contrary to the law has been convicted of such unlawful selling at the place named in the bill. Hartley *v.* Henretta, 35 W. Va. 222, 13 S. W. 375.

State Must Promptly Prove Its Case.—If an injunction is awarded under § 18, ch. 32, W. Va. Code, as amended by ch. 40, acts, 1897, enjoining and restraining the defendant from selling, offering, or exposing for sale, spirituous liquors, etc., in a certain building alleged to belong to them, the state must promptly prove its case, or, on answer filed, plainly and positively denying all the material allegations of the bill, a motion to dissolve must be sustained, unless good and sufficient cause is shown for further delay. State *v.* Reymann, 48 W. Va. 307, 37 S. E. 591.

PROCEEDINGS TO OBTAIN INJUNCTION.

The bill of injunction shall be verified by oath, and no bond shall be required, when such suit shall be brought by the attorney-general or any attorney for the Commonwealth.

VIOLATION OF TERMS OF INJUNCTION.

Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in jail for not less than thirty days nor more than six months, in the discretion of the court. But any such defendant shall have the right to demand a trial by jury.

PUNISHMENT.

27. Any person violating any of the provisions of or failing to comply with any of the requirements of this act shall be deemed guilty of a misdemeanor, unless otherwise provided herein, and shall be fined not less than fifty dollars nor more than one hundred dollars for each offense, and in addition he may, in the discretion of the court, be imprisoned not more than sixty days. And shall be required to give bond for twelve months with approved security in the penalty of five hundred dollars, and conditioned that he will not violate the provisions of this act. For the second and each succeeding offense he shall be fined not less than one hundred dollars, and shall be confined in jail not less than two nor more than six months, shall forfeit his bond previously given and be required to give bond with approved security in the penalty of one thousand dollars, conditioned as above. If he shall fail or refuse to execute the bond herein required, either for the first or any succeeding offense, he shall be confined in jail, in addition to his other punishment, not less than two nor more than six months.

Allegation of Former Offense.—Under the act of 1 Rev. Va. Code, 1792, which provides that persons having been convicted of retailing liquors who shall afterwards be guilty of the same offense and con-

victed thereof shall receive an increased punishment, a judgment as upon a second conviction should not be rendered in a case where a defendant is convicted on the same day under each of two informations for retailing spirituous liquor, the second information not alleging that it is for a second offense, after a conviction for a similar offense. Com. *v.* Welsh, 2 Va. Cas. 57.

LIMITATIONS OF ACT.

28. Nothing in this act shall be construed to prevent wholesale confectioners from selling fruits preserved in ardent spirits nor breweries from selling beer direct to consumers in their homes where the same is not prohibited by this act, and nothing in this act shall be construed to change the provisions of the charter of any town or city in the State touching the granting of licenses, or with any special act concerning the sale or manufacture of liquor or cider in any county of the State. Nothing in this act shall be construed to prohibit the sale of denatured alcohol for use in arts or for the purpose of fuel, light and power.

MEANING OF TERM "LOCAL OPTION OR NO LICENSE TERRITORY."

Wherever the words local option or no license territory are used in this act they shall be construed to mean territory in which the people have decided by the election under the local option law or other local laws in force in said territory, that license to sell ardent spirits shall not be granted any territory in which license cannot be granted under the provisions of this act.

JURISDICTION.

29. The circuit and corporation courts in addition to the jurisdiction, they now have shall have concurrent jurisdiction with the justices in all prosecutions arising under this act.

FORFEITURE OF BONDS OF VIOLATORS OF PROVISIONS.

The bond taken of a licensed dealer or manufacturer under this act shall be deemed forfeited by his failure to pay any part of the penalties assessed against him by this act, and any portion as to which there is such failure of payment may be recovered of him and his sureties by motion or suit in any court having jurisdiction.

Action Against Sureties on Liquor Bond.—In an action against sureties on the bond of one who has been convicted of unlawful selling liquor to a minor, it is not necessary to allege and prove that such sale was made, but it is enough to allege that fines were recovered for that offense by judgment. State *v.* Nutter, 44 W. Va. 385, 30 S. E. 67.

REPEAL OF FORMER ACTS.

30. Sections one hundred and forty-one and one hundred and forty-two of an act to amend and re-enact sections seventy-five to one hundred and forty-seven, inclusive, of an act approved April sixteenth, nineteen hundred and three, entitled "an act to raise revenue for the support of the government and public free schools, and to pay the interest on the public debt and to provide a special tax for pensions as authorized by section one hundred and eighty-nine of the Constitution, approved February nineteenth, nineteen hundred and four," and all acts and parts of acts inconsistent with this act are hereby repealed.

FROM WHAT TIME ACT OPERATIVE.

31. There being an emergency making it necessary that this act shall go into effect so that the licenses provided therein may be issued as of the first of May, this act is hereby declared an emergency act, and shall be in effect from its passage, provided however that nothing herein contained shall affect the validity or duration of licenses heretofore granted.